

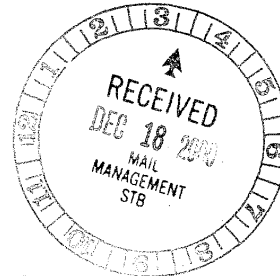


201061

1920 N Street, NW, Suite 800 • Washington, DC 20036 • Phone (202) 216-9270 • Fax (202) 216-9662

December 18, 2000

The Honorable Vernon A. Williams
Office of the Secretary
Surface Transportation board
Case Control Unit
ATTN: STB Ex Parte No. 582 (Sub-No.1)
1925 K Street, NW
Washington, DC 20423-1001



ENTERED
Office of the Secretary

DEC 18 2000
Part of
Public Record

RE: Ex Parte No. 582 (Sub-No. 1)

Dear Secretary Williams:

Enclosed, please find ARC's original reply comments in the Ex Parte 582 Sub-1 filing, along with the completed certificate of service, 25 copies of those items and a 3.5-inch IBM-compatible diskette containing an electronic copy of these comments.

Sincerely,

ENTERED
Office of the Secretary

Diane C. Duff

DEC 18 2000
Part of
Public Record

Diane C. Duff
Executive Director

Enclosures

REPLY COMMENTS
of the
ALLIANCE FOR RAIL COMPETITION

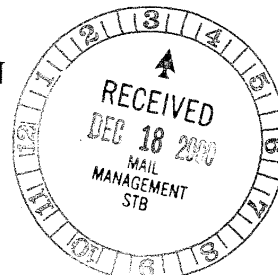
ENTERED
Office of the Secretary

DEC 18 2000

Part of
Public Record

BEFORE THE SURFACE TRANSPORTATION BOARD

STB Ex Parte No. 582 (Sub-1)
Major Rail Consolidation Procedures
December 18, 2000



After reviewing the comments of the many different interests participating in this proceeding, several basic elements regarding the future treatment of major rail mergers become very clear:

1. Virtually every commenting party believes that the proposed rulemaking is too vague and requires specific rules that will provide everyone with a common understanding of the criteria that will be used to judge future mergers;
2. Railroads and their customers remain diametrically opposed in their views as to whether and how “competition”—either among railroads or with other modes of transportation—should be addressed in relation to future mergers; and
3. For good public policy to result from this proceeding, the Board must take the difficult step of developing a clearly defined merger policy that recognizes and adequately responds to the pro-competitive intentions of the statute and the legitimate concerns repeatedly forwarded by the rail customer community and others.

Rather than replying to each comment filed with the Board, ARC will reply to a couple of the basic philosophic differences that exist between railroads and their customers in this proceeding. The Board must choose between these differences if it is to offer anything other than a vague and ambiguous policy regarding major rail mergers.

1. It is the Association of American Railroads’ (AAR) contention that the Board should not use its broad merger review authority to mandate competitive conditions. Yet, the AAR also has suggested in other forums that it is inappropriate for the Board to mandate competitive conditions under any other portion of its statutory authority, either. Based on the AAR’s logic, the statute endorses monopoly market power. The railroads’ position is clearly wrong.
2. The AAR also claims that there is a market-based imperative that all merging carriers become more effective competitors. In order to subscribe to this view, one must carry out the theory to its inevitable conclusion, which would result in the creation of only one mega-carrier with full monopoly control.

3. Finally, the AAR seems to believe that "competitive rivalry" is an adequate substitute for actual competition.

None of these assertions are in the best public interest, and in fact, directly flout the intentions of the laws established to regulate railroad behavior. A basic review of existing statutory language clearly demonstrates that a pro-merger sentiment existed in 1980, *but not to the exclusion of competition among railroads* as well as with other modes. Furthermore, conversations with several legislators who were directly involved in the debate leading up to passage of the Staggers Rail Act of 1980 reinforce the rail customer community's view that competition was intended to be the central component of a "deregulated" rail industry. In short, the Board and its predecessor allowed "merger mania" to go too far without adequate attentiveness to ensuring customer choice—whether that be achieved through merger conditions or modifications to other existing policy decisions.

Many efficiencies were gained as a result of mergers in the 80s when, by all accounts, the railroads had excessive capacity and needed to streamline operations. But systemwide excessive capacity ceased to exist some time ago, while mergers continued in the remaining railroads' never-ending quest to demonstrate short term, quarterly earnings gains to Wall Street. It is simply faster for railroads to pursue another "silver bullet" merger than focus on growing revenues by attracting new customers onto its system through service improvements, operational innovations and improved relationships with existing customers. However, compared to the actual results of recent major mergers, the concept that mergers are a "silver bullet" can only be characterized as a fantasy, and in that regard, the experiences of the past 5-10 years should not be lost on the STB. While railroads based their mergers on large projected savings and promised service improvements, the results were somewhat different. The last two major mergers have resulted in two of the biggest service crises in the history of railroading. Promises were made, but few were kept. And at the end of the day, who paid the biggest price for these railroads' mistakes? The obvious answer is these railroads' captive customers, but probably a more accurate answer would be the national economy.

Throughout the past twenty years, mergers have been measured against short sighted and erroneous applications of economic theories, such as the one-lump theory and 3-to-2 vs. 2-to-1 points. These means of defining competitiveness have consistently undermined what little competitive pressure rail customers were once able to bring to bear at various points on their rail routes. Many gateways were closed either physically or economically with the blessing of regulators, and while the proposed rulemaking attempts to address physical closure, it continues to ignore the potential for economic closures in future mergers. In its merger criteria, the Board must address the concept of economic closure—not just physical closure. And too often, the concept that "competitive rivalry" actually constitutes direct competition has been accepted by regulators, when the only competition going on is over which railroad can collect ownership of the most railroad properties first. Little or no competition has been experienced by large segments of rail customers who, for reasons of geography, commodity or safety, have no realistic ability to access the competition offered by other modes of transportation.

A failure to promote choice among railroads for all rail customers ignores the very premise of deregulation and undermines the strength of the rail industry in the long-term. This Board often

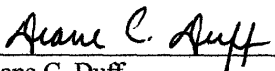
cites the fragility of the rail industry as a reason to not act in support of increased competition, yet this fragility has been caused at least in part by the Board's very unwillingness to act decisively in promoting competition among railroads. Continuing in any form a policy that is biased against increased competition among rail carriers will only further weaken the rail industry

As we move steadily into the 21st century, the dominance of the U.S. economy will face more and more challenges as global competitiveness increases. In order to be a supporting part of future economic growth, the railroads, too, must be competitive in a way that they are not today.

Railroads claim they are competitive with trucks, yet 87% of the Nation's freight moves by truck.

Customer complaints about rail service quality and reliability run rampant, and those who have the ability to choose another mode of transportation largely have. Clearly, today's policies are not working—not for customers, not for railroads, and certainly not for the public interest. It is more than time to change the paradigm, and the elements of competition have been proven to be an effective remedy time and time again, in industry after industry—many of which were once deemed to be natural monopolies. Many reasonable recommendations for promoting competition through the merger policy process have been forwarded by rail customers and the trade associations representing the major rail-reliant industries. Those recommendations that promote customer choice and create a fair balance between a carrier and its customer in the marketplace should be adopted in the final rulemaking. Competition is the answer. Give competition a chance.

Submitted by:



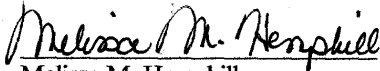
Diane C. Duff
Executive Director
Alliance for Rail Competition
1920 N Street, NW
Suite 800
Washington, DC 20036
PH: 202-216-9270
diane@railcompetition.org

12/18/2000

Date:

CERTIFICATE OF SERVICE

I hereby certify that this reply statement of the Alliance for Rail Competition has been duly served on all Parties of Record identified on the Ex Parte 582 (Sub-1) service list via first class mail in the United States Postal Service this 18th day of December, 2000.



Melissa M. Hemphill
Alliance for Rail Competition